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IN THE

Supreme Court of the United States

OCTOBER TERM--1944

No. 1166

GREATER NEW YORK BROADCASTING CORPORATION,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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GREATER NEW YORK BROADCASTING CORPORATION,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

Greater New York Broadcasting Corporation, your petitioner, respectfully prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Second Circuit, entered February 26, 1945 (R. 68), which decreed enforcement of an order of the National Labor Relations Board against your petitioner, in a proceeding pursuant to Section 10 of the National Labor Relations Act (49 Stat. 452).

History of the Case

This cause came before the Circuit Court of Appeals, Second Circuit, upon a petition of the National Labor Relations Board dated April 20, 1944 (R. 1), for enforcement of its order issued March 30th, 1943, against petitioner, Greater New York Broadcasting Corporation.

The order (B. A. 1-8)[1] followed in the usual course upon the filing of amended charges on January 8th, 1941 (R. A. 327-331) by American Communications Association, CIO (herein called the "union" or "ACA"), upon which the Board issued a complaint on August 13th, 1941 (R. A. 332-341), whereupon, after joinder of issue, hearings were had from September 18th, 1941 to November 20th, 1941 (B. A. 14), and an Intermediate Report rendered by the Trial Examiner on April 25th, 1942 (B. A. 9-145).

The Board's order of March 30, 1943, which adopted the Findings and Conclusions of the Trial Examiner in all but a few minor respects (B. A. 2), found petitioner guilty of unfair labor practices, first, by interfering with, restraining and coercing its employees in the exercise of their rights in violation of Section 8(1) of the National Labor Relations Act; second, by refusing on November 4th, 1940 and thereafter to bargain collectively with the union in violation of Section 8(5) of the Act; third, by discrimination on and after December 5, 1940 in the hire and tenure of striking employees in violation of Section 8(3) of the Act (B. A. 139-140).

The order directed petitioner to cease and desist from interference, restraint and coercion; to bargain collectively

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[1] Throughout this petition and accompanying brief the following reference designations are used: B. A.—Board's Appendix to brief; R. A.—Respondent's (petitioner here) Appendix to brief; B. Ex.—Board's Exhibit; R. Ex.—Respondent's (petitioner here) Exhibit; B. B.—Board's brief in Circuit Court; R.—Vol. IV, Transcript of Record in this Court.

with the union in behalf of employees within the unit found by the Board's order to be appropriate; to offer 27 named striking employees immediate and full reinstatement to their former or substantially equivalent employment without prejudice to their seniority or their other rights and privileges; and to reimburse 26 of said striking employees and 3 additional named employees (total 29) for any loss of pay they may have suffered by reason of the petitioner's unlawful acts, by payment to each of them of a sum of money equal to that which he or she would normally have earned as wages during the period from the date of the application for reinstatement on December 5th, 1940, to the date of the petitioner's offer of reinstatement or placement on the preferential list as provided in the Board's order, less his net earnings during such period (B. A. 1-8).

A further provision of the Board's order which is vital to a consideration of the questions here presented for review, was as follows:

> "It is further ordered that the complaint be, and it hereby is, dismissed, insofar as it alleges that the respondent: (1) discharged any of its employees on or about November 3 and 4, 1940; * * *" (B. A. 7).

The Board's order also denied (B. A. 1), petitioner's motion made to the Board on May 26, 1942, after the Trial Examiner had rendered his Intermediate Report, for leave to adduce additional evidence bearing on the commission of sabotage at petitioner's radio station by certain employees who the Trial Examiner had found had been discriminated against in regard to their hire and tenure of employment, but who petitioner asserted had been discharged because of their participation in the commission of such sabotage (R. 41-50).

After the issuance of the Board's order, and immediately upon the institution of enforcement proceedings in the Circuit Court of Appeals, petitioner on May 19, 1944,

made a similar application to the Court under Section 10(e) of the National Labor Relations Act for leave to adduce additional evidence as to the commission of the alleged sabotage, and as to the bearing of such sabotage on petitioner's discharge of and refusal to reinstate such employees (R. 5-41). The motion was opposed by the Board (R. 61-63), and denied without opinion by the Court on June 27, 1944 (R. 63).

The Circuit Court of Appeals, thereafter granted enforcement of the Board's order in its entirety. The opinion of the Court, rendered February 6, 1945, is appended to the record (R. 64-67), and is not yet officially reported.

Enforcement of the Board's order has been stayed by the Circuit Court of Appeals pending the determination of this application for a writ of certiorari.

Summary Statement of Matters Involved

Petitioner operates Radio Station WOV, maintaining studios in New York City and its transmitter in Kearney, New Jersey. At the time here in question petitioner employed 39 persons consisting of 10 technicians, 10 announcers, 2 sound-effects men and 17 miscellaneous employees.

This controversy stems from a strike called by the Union on November 3, 1940 and which continued to December 5, 1940. The strike was called on November 3rd, in the midst of collective bargaining negotiations between the Union and petitioner, which had proceeded since September 28, 1940 (B. A. 23-41). The cause of the strike, in which 34 employees joined, was the Union's claim that petitioner was not bargaining in good faith (B. A. 41). The Board found, however, that petitioner was actually bargaining in good faith with the Union when the strike was called, and that *the strike was not caused by any unfair labor practice on the part of petitioner* (B. A. 105-106; 115).

Coincident with the calling of the strike, and as part of their strike action, the union officials caused the station to be abruptly shut down by the employees and taken off the air at 3:30 P. M. on November 3rd, 1940 notwithstanding they knew programs were scheduled to be broadcast continuously until midnight (B. A. 41; R. A. 72). When the strikers refused petitioner's request to restore the station to the air (B. A. 42-43), petitioner immediately engaged the services of other engineers who attempted to do so but without success, because it was found that the delicate radio equipment at both the studio and transmitter had been deliberately and extensively sabotaged (B. A. 123; 1337-1341). It was not until 4:30 P. M. the following day, November 4th, after 25 hours had elapsed, that they succeeded in restoring the equipment to normal condition and returned the station to the air (B. A. 53, 62).

Promptly upon the discovery of the sabotage at the New York studio premises on November 3rd, and at the New Jersey transmitter on the morning of November 4th, petitioner discharged all the employees who had been present at the studio and transmitter premises at the time of the shutdown and who alone could have committed or permitted the sabotage (B. A. 967; R. A. 232a). These employees numbered 15 of the 34 on strike (B. A. 13). Similarly, when the strike ended on December 5th, and the union requested blanket reinstatement of all the 34 striking employees (B. A. 65), those 15 so discharged for the sabotage were denied reinstatement, while most of the other strikers who had not been involved in the sabotage were reinstated (B. A. 11, footnote 1).

Thereafter, on August 13, 1941, the Board commenced this proceeding against the petitioner by the issuance of a complaint in which it alleged, among other things, that petitioner "did on or about November 3 and 4, 1940, discharge" the said 15 employees, among others (Complt. ¶¶ 4 and 8; R. A. 333-335); that after their discharge, petitioner refused

to reinstate said 15 employees (Complt. ¶¶ 5 and 9; R. A. 334-335); and that petitioner's discharge of those 15 men and its refusal to reinstate them was because of their union activities (Complt. ¶ 14; R. A. 336).

Petitioner interposed an amended answer, in which it expressly admitted the discharge of those 15 men "at the time mentioned" in the complaint (Am. Ans. ¶ "First"; R. A. 345) and also petitioner's refusal to thereafter reinstate them (Am. Ans. ¶ "Second"; R. A. 346); denied that their union activities were the cause thereof; and affirmatively alleged that those 15 men had been discharged because of the commission of the sabotage and for other good and sufficient cause, and that petitioner had thereafter refused them reinstatement for the same cause (Am. Ans. ¶ "Eleventh"; R. A. 348-349).

In view of the above express admission in the answer of the allegation in the complaint that those 15 men had been discharged and refused reinstatement, the sole issue framed by the pleadings with respect to those 15 men was the *cause* of their discharge and refusal of reinstatement; viz., whether they had been discharged and refused such reinstatement because of their union activities as alleged in the complaint on the one hand, or because of their participation in the commission of the sabotage as alleged in the amended answer on the other hand.

The determination of that issue was crucial, not only on the question of the Board's power to direct their reinstatement with back pay, but also to direct petitioner to bargain with the union, for it was conceded that if those 15 men had been discharged for valid cause on November 3-4, 1940, the union thereby lost its majority.

On those pleadings, with the issue thus clearly defined, the case proceeded to trial on September 18, 1941, and lasted ten weeks. The pleadings marked the boundaries within which the case was tried. At no time was there any

departure by any of the parties from the issues as framed by the pleadings. Two motions made by the Board at the end of its own case (R. A. 167-8), and at the close of the entire case (R. A. 323-4), to conform the pleadings to the proof were granted only to the extent of correcting minor errors in names and dates, and the Board expressly stated that such motions were not intended to change the theory of the action in any way or the allegations of the complaint on the merits (R. A. 323-4).

When the Board rendered its decision, however, it completely ignored the issue as to those 15 men so clearly framed by the pleadings, and found, contrary to the admission in the pleadings, that those 15 men *had not been discharged at all* on or about November 3rd or 4th, 1940 (B. A. 118, 123); that they had merely been "threatened" with discharge on or about those dates (B. A. 116-117); and that petitioner had thereafter denied them reinstatement when requested on December 5th, 1940, in order to make good that "threat" (B. A. 128). In so holding, the Board expressly *dismissed* the allegation of the complaint which alleged that those men had been discharged on or about November 3rd and 4th (B. A. 7), and which allegation had been admitted in petitioner's amended answer (R. A. 345-6).

The Board further held that in view of its finding that those 15 men were not discharged by petitioner on or about November 3rd and 4th, it was unnecessary to determine the question of whether or not sabotage had been committed, which sabotage had been asserted by petitioner's answer as the cause for their discharges; and, in fact, the Board did not decide that issue (R. 62; R. A. 555). On the finding so made by the Board in complete disregard of the single issue framed by the pleadings, and directly contrary to the admission in the pleadings, the Board rested its order directing the petitioner not only to reinstate those 15 men with back pay but also to bargain with the union.

In resisting enforcement of the Board's order, petitioner contended before the Circuit Court of Appeals, that it was conclusively established by the pleadings (by which petitioner and the Board were bound) that those 15 men had been discharged on or about November 3rd and 4th; that the Board could not conclude that petitioner's refusal to reinstate them thereafter on December 5th when requested, was improper, unless the Board found, on substantial evidence, that their discharges on November 3rd or 4th had been improper and discriminatory rather than for cause; and that the Board made no such finding and could not have done so on the basis of any record evidence (R. 64).

Surprising as it may seem, when the Court rendered its decision granting enforcement, it reverted to the pleadings and rested its determination upon a holding (directly contrary to the finding of the Board) that those 15 men had been discharged as the complaint alleged (R. 65). The Court took the view that petitioner's refusal to reinstate those men (on December 5, 1940) was in effect a discharge; that when the Board found that petitioner refused to reinstate those men on December 5th "the Board thus, in effect, found that (petitioner) discharged these employees" (R. 65); and that such "discharges" on the date of December 5th were open to proof within the reasonable limits of the allegation of the complaint which alleged that the discharges occurred not on November 3rd and 4th but "on or about" those dates (Opinion, R. 65).

Manifestly, the holding of the Court constituted a decision *de novo*, which the Board did not make and which the Court had no power to make. The Board's order expressly dismissed the allegations of the complaint which alleged the discharges of those men on or about November 3 and 4, 1940 (B. A. 7; p. 3, *supra*), and held that no discharges occurred. The Court was therefore without power to sustain the Board's order upon a holding to the contrary that

the discharges *had* been established and found by the Board within the allegations of the complaint which the Board had itself expressly dismissed as unproved.

Further details as to the matters involved herein appear below, under the heading "Reasons Relied on for the Allowance of the Writ."

Jurisdiction

The jurisdiction of this Court to review the decree of the Circuit Court of Appeals is invoked under Section 10(e) of the National Labor Relations Act, and Section 240(a) of the Judicial Code.

Questions Presented

1. Whether the Board's order was void for want of due process where, after the case had been fully tried on pleadings in which the issues were clearly defined and the proof limited solely to those issues, the Board in rendering its Decision and Order entirely abandoned the very substance of the main and principal charge which petitioner had been summoned to defend, and substituted as the basis for its order, an entirely different charge which it resolved against petitioner, but which had never been put in issue, had never been litigated, could not have been anticipated by petitioner and which petitioner had no opportunity to meet; and except for which a dismissal of the entire complaint by the Board would have been unavoidable.

2. Where the Board and petitioner had conclusively stipulated in their respective pleadings as to a decisive fact in the case (that the 15 men had been discharged on November 3-4), and thus removed it as an issue, and the parties proceeded with the trial in reliance upon the stipula-

tion, recognizing the stipulated fact as established in the case, permitting of no controversy, requiring no proof, and for all purposes of the proceeding taken to be true, but the Board nevertheless in issuing its decision not only ignored the stipulated fact completely, but rested its order on a finding of fact (that the 15 men had never been discharged), directly contrary to the fact as so stipulated and unlitigated, may such unwarranted finding by the Board be held as a matter of law, and on any theory, to be supported by substantial evidence?

3. Whether, in holding that the decision of this Court in *National Labor Relations Board* v. *Mackay*, 304 U. S. 333, 348, was here decisive on the issue of due process, the Circuit Court of Appeals did not misread its teaching and improperly extend its authority to the clearly distinguishable factual situation in this case.

4. Whether the Circuit Court of Appeals had the power, as a basis for enforcement of the Board's order, to render a decision on the evidence *de novo* embodying a factual finding on a decisive issue (the discharges), directly contrary to the finding made by the Board itself on that issue, and which latter necessarily called for a denial of enforcement.

5. Where the complaint alleged that petitioner discharged its employees on or about November 3-4, 1940, but the Board found that no discharges had in fact occurred and expressly dismissed that allegation of the complaint, was it not palpable error appearing on the face of the opinion, for the Circuit Court of Appeals to construe the finding of the Board to the contrary, and to hold that the finding of the Board was to the effect that petitioner did discharge its employees within the allegation of the complaint which the Board had expressly dismissed.

6. Whether it was an abuse of discretion for the Board and the Circuit Court of Appeals to deny petitioner's motions for leave to adduce additional evidence as to the sabotage committed at petitioner's radio station on November 3-4, 1940 and as to the bearing of such sabotage upon petitioner's discharge of and its refusal to reinstate the 15 men.

Subordinate Questions

The following additional questions are errors which are assigned, and which, though perhaps not in themselves of sufficient importance or general interest to warrant granting the petition, further demonstrate, when considered with the other questions presented, the merit of this petition and the cumulative grounds which exist for reversal of the decree below:

7. Where in the course of bargaining negotiations between petitioner and the Union, both agreed that the disputed questions of (1) appropriate bargaining unit and (2) the Union's majority representation, should be determined by the National Labor Relations Board, and such questions were actually submitted to the Board pursuant to such agreement, but never decided by the Board because of the Union's subsequent unilateral action in tabling the same coincident with the calling of the strike, did petitioner's refusal to bargain with the Union during and after the strike and before those issues were determined by the Board, constitute as a matter of law, a violation of Section 8(5) of the National Labor Relations Act, as the Board found?

8. Whether there was any substantial evidence in the record to support the Board's finding (1) that the strike was prolonged by unfair labor practices on the part of the employer and (2) that petitioner discriminated in regard

to hire and tenure of employment of strikers, not discharged, who were not reinstated.

Reasons Relied on for Allowance of the Writ

As to Question #1:—*Whether the Board's order was void for want of due process.*

Petitioner's contention in this case of a denial of due process and deprivation of substantial rights guaranteed by the Fifth Amendment rests upon the undisputed fact that while the specific issue pleaded and tried was whether the 15 men *admittedly discharged* had been so discharged for valid cause as the petitioner alleged or for union activities as the Board alleged, the Board nevertheless decided the case adverse to petitioner on the wholly different ground that those 15 men had never been discharged at all—a ground not only not put in issue and not litigated, but squarely in conflict with the admissions in the pleadings to the contrary.

That unwarranted finding of the Board was crucial and decisive of the case, for upon it was founded the provisions of the Board's order directing petitioner to reinstate those men with back pay and also to recognize and bargain with the union.

Pleadings and a distinct issue are essential in every system of jurisprudence. There can be no orderly administration of justice without them. If a party can allege one cause of action and then recover on another, his complaint will serve no useful purpose but rather to ensnare and mislead his adversary. Such was the situation in this case; the Board completely failed to prove the cause of action alleged in the complaint, but nevertheless issued its order against petitioner on grounds neither pleaded nor tried. Due process requires that such an order be not permitted to stand. In granting enforcement of the Board's order

the Circuit Court of Appeals so far sanctioned such a flagrant departure by the Board from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision. The error should be reviewed and corrected (Supreme Court Rule 38, Section 5(b)).

As to Question #2:—*Whether the finding of the Board to the effect that the 15 men were not discharged at all, can be held as a matter of law to be supported by substantial evidence in the face of the clear admissions in the pleadings that they were discharged.*

Aside from the question of denial of due process, the Board's finding that the 15 men were not discharged, flies in the face of the admitted, stipulated and unlitigated fact, by which the Board was bound, that those men were discharged on or about November 3-4, 1940. The complaint alleged it; the answer admitted it. Under such circumstances, the finding of the Board was wholly unwarranted, and as a matter of law could not be supported by substantial evidence.

The palpable error of the Board's finding, which the Circuit Court of Appeals refused to disturb, should be reviewed and corrected by this Court (*Postal Telegraph Co.* v. *Newport*, 247 U. S. 464, 473).

As to Question #3:—*Whether the Circuit Court of Appeals properly applied to the facts in this case the doctrine of National Labor Relations Board* v. *Mackay*, 304 U. S. 333, 348.

In holding that the conflict between the Board's finding on the one hand, and the admission in the pleadings on the other hand, did not call for a denial of enforcement, the Circuit Court of Appeals quoted *in extenso* from the opinion of this Court in the *Mackay Radio* case (*supra*), which it considered controlling. The opinion in that case,

however, discloses that an entirely different factual situation there existed. There, the Court found "that at no time during the hearing was there any misunderstanding as to what was the basis of the Board's complaint"; that the employer "understood the issue and was afforded full opportunity to justify the action of its officers as innocent rather than discriminatory"; that the factual issues determined by the Board had been properly framed by the pleadings; "that the issues and contentions of the parties were clearly defined"; that the issues determined by the Board had been fully litigated during the hearing, and, finally, that at the close of the trial the pleadings had been conformed to the proof.

Not so in the case at bar. Here, the issue of the discharges was out of the case from the outset by virtue of the admission in the pleadings that they had been discharged. Only the *cause* of their discharge was litigated; and that was the only issue as to the 15 men framed by the pleadings. None of the parties at any time throughout the trial indicated a desire to depart from the framework of the pleadings and, in fact, they did not; and at the close of the trial the Board's motion to conform the pleadings to the proof was granted only to the extent of correcting minor errors in names and dates, and expressly excluding any amendment of the complaint which would change the theory of the case in any way or the allegations of the complaint on the merits (R. A. 323-324).

Hence, it is clear that in this case, petitioner is asserting no mere technicality as did the employer in the *Mackay* case. Here, there is a clear showing that the conflict between the Board's finding and the pleadings deprived the petitioner of substantial rights, to its extreme prejudice, in violation of the guarantee of the Fifth Amendment. The Circuit Court of Appeals was in error when it held the *Mackay* case here controlling; and this Court should review and correct that error as in conflict with applicable

decisions of this Court (Supreme Court Rule 38, Section 5(b)).

As to Questions #4 and #5:—*Whether the Circuit Court of Appeals had the power to render a decision on the evidence de novo; and whether the Court committed palpable error, appearing on the face of its opinion, when it held that the Board had found the discharge of the 15 men when actually the Board had expressly refused to make such finding.*

Under Section 10(e) of the National Labor Relations Act, the province of the Circuit Court is limited solely to determining whether there is substantial evidence to support the Board's findings. There is no power in the Court to render a decision on the evidence *de novo*, which the Circuit Court in this case undertook to do. It held that the 15 men had been discharged when in fact no such finding had been made by the Board. It held that the Board had found, in effect, that those 15 men had been discharged as alleged in the complaint, when in truth the Board had refused to so find and had expressly dismissed the complaint in so far as it alleged such discharges (see p. 3, *supra*). For the correction of such clear and palpable error appearing on the face of the opinion of the Court and the order of the Board, this Court should grant review. (*Postal Telegraph Co.* v. *Newport* (*supra*); Supreme Court Rule 38, Section 5(b).)

As to Question #6:—*Whether it was an abuse of discretion for the Board and the Circuit Court of Appeals to deny petitioner's motions for leave to adduce additional evidence.*

During the hearing much evidence was adduced on the issue of the commission of sabotage, since the determination of that question would resolve the further issue as to whether the 15 men admittedly discharged and refused reinstatement had been so discharged and refused reinstate-

ment for valid cause or for union activities. Nevertheless, the Trial Examiner, in rendering his report, failed to pass on the question as to whether or not sabotage had been committed (R. 62; R. A. 555). The petitioner, thereupon, addressed a motion to the Board for leave to adduce additional evidence on that subject, with the view of having the issue of sabotage determined by the Board one way or another (R. 41). The Board denied the motion in its order adopting the Trial Examiner's report (B. A. 1).

When enforcement proceedings were instituted in the Circuit Court of Appeals petitioner made a similar motion requesting similar relief (R. 5). The Board opposed the motion on the ground that the issue of sabotage was not material (R. 62; R. A. 555), and the Court denied the motion (R. 63).

Petitioner respectfully submits that since the issue of the commission of sabotage was vital on the question of the justification for the discharge of the 15 employees, and since the Board did not reach a decision on that issue upon the evidence already in the record, it was an abuse of discretion to deny the petitioner's motion to adduce additional evidence (*Corning Glass Works* v. *NLRB*, 129 F. (2d) 967, 972). Especially was this so in view of petitioner's clear showing of valid and cogent reasons for its failure to adduce such additional evidence during the hearings (R. 16-21). Under the circumstances the denial of the motion constituted a denial of due process which this Court should remedy (Supreme Court Rule 38, Section 5(b)).

As to Question #7:—*Whether, as a matter of law, petitioner was guilty of a violation of Section 8(5) of the National Labor Relations Act, where there existed an express agreement between petitioner and the union to have the disputed questions of appropriate unit and the union's majority representation first determined by the National*

Labor Relations Board, and such questions while submitted to the Board, were never decided by reason of the union's subsequent unilateral action.

In the negotiations between the petitioner and the union immediately preceding the strike on November 3rd, the parties were in bona fide disagreement as to the appropriate bargaining unit and also as to the union's majority representation. Accordingly, they agreed to have those questions determined by the National Labor Relations Board, and pursuant to such agreement the union actually instituted a proceeding under Section 9 of the National Labor Relations Act wherein those questions would necessarily be resolved by the Board (B. A. 26). Pending determination of those issues by the Board the parties undertook negotiations of terms and provisions of employment which would be applicable to the employees in the event that the union's claim of majority representation should be established by the Board (B. A. 35-36). In the midst of those negotiations the Union called the strike and simultaneously notified the Board to table the proceeding which had been instituted for the determination of the disputed questions (B. A. 1299). As a result, there was never any determination by the Board as to the appropriate bargaining unit or the union's majority representation.

The Board in this proceeding held, notwithstanding, that the petitioner's refusal to treat with the union during the strike or to bargain collectively with the union during the strike, constituted a violation of Section 8(5) of the Act; and the Circuit Court, in granting enforcement, sustained the Board's view. The holding is so clearly contrary to numerous decisions of the Courts and the Board which hold that under such circumstances an employer is under no duty to bargain with the union (*cf. NLRB* v. *Piqua Munising Wood Products Co.*, 109 F. (2d) 552), that the error should be reviewed and corrected by this Court (Supreme Court Rule 38, Section 5(b)).

As to Question #8:—*Whether the Board's findings that the strike was prolonged by unfair labor practices, and that the petitioner discriminated against strikers, not discharged, were supported by substantial evidence.*

It is submitted that the findings above referred to are wholly without support in the record. The question is more fully discussed in the annexed brief, and review is respectfully requested.

PRAYER

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out and under the seal of this Court, directed to the United States Circuit Court of Appeals, Second Circuit, to the end that the order and judgment of the said Circuit Court of Appeals in this cause be reviewed and reversed, and for such other and further relief as may be just and proper.

Dated, April 11, 1945.

GREATER NEW YORK BROADCASTING CORPORATION,

By SANFORD H. COHEN,
Attorney.